



# *COMMONWEALTH of VIRGINIA*

## *DEPARTMENT OF ENVIRONMENTAL QUALITY*

### NORTHERN REGIONAL OFFICE

13901 Crown Court, Woodbridge, Virginia 22193

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Molly Joseph Ward  
Secretary of Natural Resources

David K. Paylor  
Director

Thomas A. Faha  
Regional Director

## **STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO FANNON PETROLEUM SERVICES, INC. AND WHARTON SUPPLY INC., of VIRGINIA**

### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code § 62.1-44.34:20, between the State Water Control Board and Fannon Petroleum Services, Inc., and Wharton Supply Company Inc. of Virginia, for the purpose of resolving certain violations of the State Water Control Law and the applicable regulations.

### **SECTION B: Definitions**

Unless the context indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "Containment and cleanup" means abatement, containment, removal and disposal of oil and, to the extent possible, the restoration of the environment to its existing state prior to an oil discharge.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying or dumping.

6. "Facility" means the facility, land, road, storm drain(s) or state water(s) where the oil discharge occurred. The Facility is located at 7620 Backlick Road, Springfield, Virginia.
7. "Fannon" means Fannon Petroleum Services, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Fannon is a "person" within the meaning of Va. Code § 62.1-44.3.
8. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
9. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
10. "Oil" means oil of any kind and in any form, including, but not limited to, petroleum and petroleum by-products, fuel oil, lubricating oils, sludge, oil refuse, oil mixed with other wastes, crude oils and all other liquid hydrocarbons regardless of specific gravity. *See* Va. Code §62.1-44.34:14.
11. "Operator" means any person who owns, operates, charters, rents or otherwise exercises control over or responsibility for a facility or a vehicle or vessel.
12. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
13. "Person" means any firm, corporation, association or partnership, one or more individuals, or any governmental unit or agency thereof.
14. "State Water Control Law" means Chapter 3.1(§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 11 (Va. Code §§ 62.1-44.34:14 through 62.1-44.34:23) of the State Water Control Law addresses discharge of oil into waters.
15. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
16. "Va. Code" means the Code of Virginia (1950), as amended.
17. "VAC" means the Virginia Administrative Code.
18. "Vehicle" means any motor vehicle, rolling stock or other artificial contrivance for transport whether self-propelled or otherwise, except vessels.
19. "Wharton" means Wharton Supply Inc., of Virginia, a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Wharton is a "person" within the meaning of Va. Code § 62.1-44.3.

**SECTION C: Findings of Fact and Conclusions of Law**

1. Wharton owns the Facility which is a building supply company located in Fairfax County. At the Facility is a 1,000 gallon underground storage tank used for the storing heating oil. Wharton contracted with Fannon for the delivery of heating oil to this tank.
2. On February 24, 2015, DEQ received notification of a discharge of Oil, in the form of heating oil, at the Facility. This notification was made by Wharton upon discovering evidence that a discharge had occurred. At the time of notification, Fannon did not have actual knowledge of the discharge.
3. The notification indicated that on February 18, 2015, Fannon attempted to deliver 800 gallons of heating oil to the Facility from a Fannon vehicle to the underground storage tank onsite. During the delivery, the Fannon driver gave a Wharton employee control of the fueling hose. The Fannon driver and the Wharton employee dispensed the 800 gallons of heating oil to a tankfield observation well rather than the tank fill port. The tankfield observation well contained openings allowing product to migrate into the groundwater.
4. Va. Code § 62.1-44.34:18 prohibits the discharge of oil into or upon state waters, lands, or storm drain systems that violate applicable water quality standards or cause a film or sheen upon or discoloration of the surface of the water.
5. On March 16, 2015, the Department issued a Notice of Violation No. to Fannon and Wharton for a discharge of oil to the land and state waters.
6. On March 26, 2015, Wharton submitted a written response to the NOV.
7. On May 18, 2015, Wharton submitted an Initial Abatement Report (IAR) to the Department. This report advised, *inter alia*, that the tank was removed from the facility and that of the 800 gallons discharged, none of it was recovered. Wharton's consultant WEG conducted an investigation of down gradient locations including Field Lark Branch and several storm water outfalls and no petroleum sheen or free product was observed.
8. Based on the results of February 24, 2015, notification and documentation submitted on May 18, 2015,, the State Water Control Board concludes that Fannon and Wharton have violated Va. Code § 62.1-44.34:18, which prohibits the discharge of oil into or upon state waters, lands, or storm drain systems, as described in paragraphs C(2) through C(3), above.
9. In order for Wharton and Fannon to return to compliance, DEQ staff and representatives of Wharton and Fannon have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

**SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code § 62.1-44.34:20, the Board orders Wharton and Fannon, jointly and severally, and Wharton and Fannon, jointly and severally, agree to:

1. Perform those actions described in Appendix A of this Order for which they are identified as responsible; and
2. Pay a civil charge of \$16,400.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

Wharton and Fannon shall include their Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Petroleum Storage Tank Fund (VPSTF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Wharton and Fannon shall be liable for attorneys' fees of 30% of the amount outstanding.

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of Wharton and Fannon for good cause shown by Wharton and Fannon, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Wharton and Fannon admit the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Wharton and Fannon consent to venue in the Circuit Court of Fairfax County for any civil action taken to enforce the terms of this Order.

5. Wharton and Fannon declare they have received fair and due process under the Administrative Process Act and the State Water Control Law and they waive the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Wharton or Fannon to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Wharton and Fannon shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Wharton and Fannon shall demonstrate that such circumstances were beyond their control and not due to a lack of good faith or diligence on their part. Wharton and Fannon shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Wharton and Fannon. Nevertheless, Wharton and Fannon agree to be bound by any compliance date which precedes the effective date of this Order.

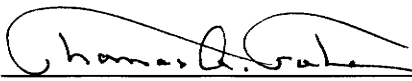
11. This Order shall continue in effect until:

- a. The Director or his designee terminates the Order after Wharton and Fannon have completed all of the requirements of the Order;
- b. Wharton and Fannon petition the Director or his designee to terminate the Order after they have completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
- c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Wharton and Fannon.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Wharton or Fannon from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Wharton or Fannon and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Wharton and Fannon certify that he or she is a responsible official or officer authorized to enter into the terms and conditions of this Order and to execute and legally bind Wharton and Fannon to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Wharton or Fannon.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Wharton and Fannon voluntarily agree to the issuance of this Order.

And it is so ORDERED this 12<sup>th</sup> day of February, 2016.

  
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Thomas A. Faha, Regional Director  
Department of Environmental Quality

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Wharton Supply Inc., of Virginia voluntarily agrees to the issuance of this Order.

Date: Dec 1 2015 By: Victor Magistrelli Secretary  
(Person) (Title)  
Wharton Supply Inc., of Virginia

Commonwealth of ~~Virginia~~ Maryland  
City/County of ~~Farmers~~ Calvert

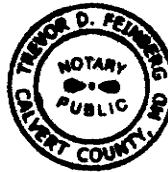
The foregoing document was signed and acknowledged before me this 1<sup>st</sup> day of December,  
2015, by Victor Magistrelli who is  
Secretary of Wharton Supply Inc., of Virginia on behalf of the corporation.

Trevor D. Feinberg  
Notary Public

Registration No. \_\_\_\_\_

My commission expires: 06/19/2019

Notary seal:



Trevor D. Feinberg  
NOTARY PUBLIC  
Calvert County  
State of Maryland  
My Commission Expires  
June 19, 2019

Fannon Petroleum Services, Inc. voluntarily agrees to the issuance of this Order.

Date: 12/8/15 By: [Signature] V.P.  
(Person) (Title)  
Fannon Petroleum Services, Inc.

Commonwealth of Virginia  
City/County of Prince William

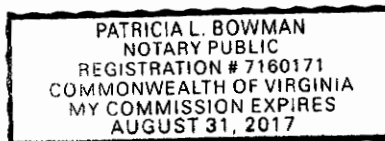
The foregoing document was signed and acknowledged before me this 8<sup>th</sup> day of December,  
2015, by Joh C. Fannon who is  
Vice President of Fannon Petroleum Services, Inc., on behalf of the corporation.

[Signature]  
Notary Public

7160171  
Registration No.

My commission expires: 8/31/17

Notary seal:





## **APPENDIX A SCHEDULE OF COMPLIANCE**

### **Wharton Supply Inc. of Virginia shall:**

Within 30 days of execution of this Order, submit to DEQ for review and comment, documentation that shall include identification of storage tanks onsite, including above and underground, location of all fill ports for the tanks, and proper notification procedures as required by Va. Code §62.1-44.34:19 in the event of a petroleum discharge. Wharton shall ensure that this documentation is made available to all employees at this location.

### **Fannon Petroleum Services, Inc. shall:**

In addition to the training that was provided on October 1, 2015, by Safety Management, Inc., within 30 days of execution of this Order, disseminate the notification procedures required by Va. Code §62.1-44.34:19 for petroleum discharges, to all employees that are responsible for handling or storing of fuel. Notifying DEQ of a petroleum discharge satisfies State Water Control Board notification requirements.

### **Fannon Petroleum Services, Inc. and Wharton Supply Inc., of Virginia shall:**

Comply with the Corrective Action Plan (CAP) submitted on behalf of Wharton and Fannon on October 14, 2015, and approved by DEQ on October 16, 2015. Wharton and Fannon shall comply with any DEQ requests for corrective action. The CAP and associated schedule is an enforceable part of this Order.

### **Contact**

Unless otherwise specified in this Order, Wharton and Fannon shall submit all requirements of Appendix A of this Order to:

**Virginia Department of Environmental Quality  
Northern Regional Office  
Attn: Enforcement  
13901 Crown Court  
Woodbridge, VA 22193**